

Appendix 1 - Contested Motion Practice

It is the court's goal to decide all motions in this case within eight weeks of the date they are ripe for consideration and decision under Local Rule CV-7. If you have not received a decision on a motion within nine weeks after the filing of the last response or reply permitted under Local Rule CV-7, you may call the court's Chief of Staff, Ms. V. J. Wisenbaker, at 409 654-2800, to determine the status of the motion.

The court's docket is growing and numerous motions must be considered every month. Accordingly, to assist the court in attaining the goal of resolving motions within eight weeks after they are ripe for decision (and to make it easier for the court to understand your position), counsel and parties shall comply with the following motion practice requirements in addition to the Federal Rules of Civil Procedure and Local Rules CV-7, CV-10, CV-11, and for motions for summary judgement, Local Rule CV-56.

1. Format

Make it easy for the Court to follow and understand your motion or response. The original is filed in the District Clerk's file, but will not be used except if copied for an appeal. The other copy you leave with the Clerk is what is read by the law clerks and the judge. Local Rule CV-7 requires you to attach affidavits and other supporting documents to the motion or response, and to highlight in the Court's copy, the portions which are cited in your motion or response. If there are more than two attachments, labeled tabs on the Court's copy will make it easier to find them. If the motion and attachments exceed 20 pages, consider spiral binding the Court's copy (**not** the original you file with the clerk) to make it easier to read.

2. Summary of case (Optional)

Counsel should begin a motion or response with a short (1-3 paragraphs) summary of the basis of the motion or response. A good summary will quickly let the law clerks and the judge know what your case and the motion is about.

3. Undisputed Material Facts (Required of Movant)

The movant shall list the undisputed facts upon which it relies to demonstrate that it is entitled to the relief requested. The list should contain only the facts which the movant contends are material¹ to the facts presented; true; and not in genuine dispute. Each such fact shall be set out in a separately numbered sentence and shall contain the specific reference to the evidentiary record which the movant claims supports it. Follow Local Rule CV-7(b) when attaching affidavits and other evidence, especially with regard to highlighting the key references in the copy provided to the court. The court is not going to search the record for facts which support your motion or response.

Counsel shall state the facts in clear and unambiguous, simple, declarative sentences. Color words, argument, and subtle inferences **will** be reserved for the argument portion of the motion. Each fact must be supported by a

¹A material fact" is one that might affect the outcome of the issue in dispute. The fact must be critical to the determination of the issue. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 91 L. Ed 2d 202, 106 S. Ct. 2505 (1986). If you feel that background facts might be helpful to put the case in context, include them in narrative form (with citations to the evidence) in a section entitled "Background Facts-Not Material to Argument." Non-movant may, but is not required to, respond to these facts, and may include other background facts in a section with the same heading..

citation to the evidence on file. Conclusory allegations and unsubstantiated assertions in an affidavit are not evidence. *See Little v. Liquid Air Corp.*, 37 F. 3d 1069, 1075 (5th Cir. 1995)

4. Response to List of Undisputed Material Facts (Required of Opposing Party)

Each opposing party's response shall include a response to the movant's claimed undisputed material facts. Remember that the purpose of the response is to focus the court's attention on the critical disputes over material facts. (See footnote 1)

The response to the movant's list of undisputed material facts shall be designated as such, and when responding to a motion for summary judgment shall take the place of the "Statement of Genuine Issues" required by Local Rule CV-56(b). The response shall contain a specific numbered reply to each numbered sentence in the movant's list of claimed undisputed facts. The reply shall be: the single word "undisputed"; the single word "disputed," followed by a specific reference to the evidentiary record; or a short explanatory phrase such as "undisputed but not material," or "undisputed but context clarified in sentence ____ below."²

Alternatively, the nonmoving party may demonstrate as to a particular fact listed by movant that additional discovery is needed to controvert such fact, pursuant to Rule 46 (f). The party must state exactly what discovery is needed, and from whom, and when the party proposes to complete such discovery. Anticipated evidence must be clearly delineated. A request for a fishing expedition in the hope that something may be obtained will not be sufficient.

Non-movant may then list any additional material (See Footnote 1) facts non-movant claims require denial of the motion. Set out each such fact in a separate sentence with a citation to the evidentiary record. Follow Local Rule CV-7(b) when attaching affidavits and other evidence.

Non-movant shall also state the facts in clear and unambiguous, simple, declarative sentences. Color words, argument, and subtle inferences **will** be reserved for the argument portion of the response. Each fact must be supported by a citation to the evidence on file. Conclusory allegations and unsubstantiated assertions in an affidavit are not evidence. *See Little v. Liquid Air Corp.*, 37 F. 3d 1069, 1075 (5th Cir. 1995)

5. Issues Presented (Required)

The movant shall clearly set out in a separate section of the motion, "Issues Presented," the precise issues, a favorable finding on which, would entitle the movant to the relief granted. Non-movant does not have to list these issues in the response, but may state other issues, such as affirmative defenses, etc. which would justify denial of the motion even assuming that movant's position on the issues raised by movant is correct.

6. Argument (Required)

In the "Argument" section of the motion or response, set out the arguments, together with citations to controlling statutes and/or cases which explain why the court should resolve the crucial issue(s) in your client's favor. Citations to controlling U. S. Supreme Court, and 5th Circuit cases (Texas Supreme Court when state law controls) are most

²The court does not intend to prevent a non-movant from arguing that movant for summary judgment has failed to carry its initial burden under *Celotex Corp. v. Catrett*, 477 U. S. 317 (1986).

persuasive. Including a cite to the specific page on which the pronouncement you are relying upon is very helpful. The court is not likely to read long cases (or numbers of cases in a string citation) searching for the holding which supports your argument.

If there is a key statute, or a case directly on point, consider binding it into the back of the Court's copy (**not** in the original you file with the clerk) with a tab labeled "Authorities." This is especially helpful if you are relying upon administrative regulations or out of state statutes. Don't include more than three cases, and don't copy long multi-page statutes or regulations when only a portion is applicable to the case. Highlight the key portions of the case, regulation, or statute so the court can quickly focus on your argument. (While the "Authorities" section should not be attached to the original filed with the clerk a copy must be served on opposing counsel.)